

INTRADEPARTMENTAL CORRESPONDENCE

March 26, 2020
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2020 MAR 30 AM 10:07*

TO: Chief of Police

FROM: Assistant to the Director, Office of Operations

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OFFICE OF THE INSPECTOR GENERAL*

SUBJECT: SUPPLEMENTAL INFORMATION TO MINORITY OPINION –
USE OF FORCE REVIEW BOARD RECOMMENDATION –
FORCE INVESTIGATION DIVISION CASE NO. F029-19

On March 23, 2020, a Use of Force Review Board (UOFRB) was convened for Force Investigation Division (FID) Case No. F029-19. The deliberations resulted in a minority opinion with regards to the Tactics finding for:

Police Officer II Jaz Menier, Serial No. 42283, 77th Street Area

The UOFRB was comprised of the following members:

Chair:	Assistant Chief Beatrice Girmala
Office of Operations:	Commander Michael Rimkunas
Personnel and Training Bureau:	Commander Ruby Flores
Bureau:	Commander Alfred Labrada
Peer Member:	Police Officer Craig Mattison

The minority opines that Police Officer II Jaz Menier substantially deviated from Department approved tactics by **not having a tactical plan while pursuing a possible armed suspect in apprehension mode, after separating from his partner.**

Use of Force- Tactics Directive, No. 3.2, October 2013, in part states:

"Chasing a fleeing suspect on foot represents an instinctive but inherently dangerous activity. Pursuing suspects without a plan may result in deadly consequences. From the initiation of a foot pursuit, officers should continually assess the tactical situation, consider their options and decide on a course of action to facilitate the suspect's apprehension."

PROCEDURES:

"At the beginning of each watch or assignment, partner officers should discuss tactical issues to prepare them for their shift or their specific mission. Such discussions should include officer safety issues such as contact and cover responsibilities and foot pursuit tactics."

Officer Menier's statements regarding his **tactical planning** with Officer Porter were:

*"After roll call while we were setting up our vehicle and going through our equipment checks we did talk about our weapons that we carried. The backups if we had any, lethal, less lethal, where we had extra ammunition. Our physical state, that I am a runner, that, you know, he's been working out and that he's trying to get back into shape so that we were both kind of on the same page of where we were at."*¹

*"Initially, we didn't say who was contact, who was cover, but we talked about that I recall we would determine it. So, we had a call and we would determine whether who wanted to be contact or cover just depending on the call and the situation because they ever evolve."*²

When asked by FID Detective Carrillo if he discussed foot pursuit tactics prior to start of watch, Officer Menier elaborated on the extent of his tactical discussions with Officer Porter by stating:

*"Not full tactics but I just discussed that I was a runner."*³

The Minority opines that Officer Menier did not thoroughly discuss foot pursuit tactics with Officer Porter prior to pursuing Suspect Carlos Avelar on foot. Officer Menier did not identify what roles he and his partner would assume if they became engaged in a foot pursuit. Officer Menier's statements that he is a runner and his partner is trying to get back into shape does not constitute an adequate plan to engage in a foot pursuit.

Use of Force- Tactics Directive, No. 3.2, October 2013, in part states:

"When officers have reasonable suspicion to detain a suspect and the suspect flees, the involved officers should make a quick assessment of the situation. They should evaluate the risk to themselves, other officers, the suspect and public safety versus what will be gained by engaging in the pursuit."

Note: Generally, single officer foot pursuits are discouraged.

*"Pursuing Armed Suspects: When pursuing a suspect believed to be armed, officers should generally do so in **containment** mode while considering the available tactical advantages, including cover and concealment where available. The goal is to maintain*

¹ Officer Menier's statement, Page 6, Line 19

² Officer Menier's statement, Page 7, Line 5

³ Officer Menier's statement, Page 7, Line 13

observation of the suspect and the tactical advantage while coordinating the response of additional units and other resources for a perimeter with the objective of containing the suspect and taking him into custody safely. The decision to pursue an armed suspect in apprehension mode may be appropriate when the suspect is at a tactical disadvantage and an arrest can be accomplished with limited risk to officers or innocent parties.”

Officer Menier’s statements regarding his discussion to pursue Suspect Avelar in **apprehension mode** were as follows:

“So, I wanted to make sure that, you know, I was giving clear instructions because he had the black bag on him. So, I did not know what was inside the bag and I hadn’t confirmed where the machete was at. So, I was trying to give him direction just let me see your hands, manos.

“He began running eastbound through the parking lot next to vehicles and next to other citizens in the area. I -- and so I began continuing in apprehension mode of the foot pursuit due to the fact that there's citizens around there that he's already been aggressive, and calls have been generated by this possible suspect.

So, he created a danger to the other citizens in the area, so I began foot pursuit and I didn't see a machete. He never pointed a machete at me, so I didn't have like an obvious weapon being -- to be addressed. I just kept asking for his hands.”⁴

The minority considers Officer Menier’s decision to pursue Avelar in apprehension mode, a substantial deviation from Department approved tactics. Reason being, Officer Menier was unsure if Suspect Avelar was armed at the time of the foot pursuit based on the comments of the radio call. At no point was Officer Menier able to verify the status of Avelar’s hands but could see that Avelar was in possession of a black bag that could have concealed a weapon. Additionally, Officer Menier acknowledged in his statement that the airship was overhead. In the interest of officer safety, utilizing the airship to set up a perimeter and guide additional resources to the scene and apprehend Avelar would have been a safer and more righteous option than pursuing Avelar on foot.

Use of Force- Tactics Directive, No. 3.2, October 2013, in part states:

TACTICS DURING A FOOT PURSUIT:

“When in apprehension mode and attempting to immediately take the suspect into custody, officers should not separate and remain alert for potential ambush.”

⁴ Officer Menier’s statement, Page 11, Line 9

The directive defines “Separation” as:

“Separation (Split Up): Separation occurs whenever the distance between the two officers is so great that one cannot render aid to the other when confronted by the suspect or barriers exist that would unreasonably delay the partner officer from being able to render aid.

Note: While in containment mode, partner officers may separate a reasonable distance for the limited purpose of setting up a perimeter, as long as they have line of sight of each other. When separated, officers should not normally transition back into apprehension mode and attempt to take the suspect into custody.”

Officer Menier’s statements pertaining to pursuing Avelar on foot:

“I deployed outside of the vehicle and the suspect began ran -- running eastbound through the drive-through of the chicken restaurant. I observed my partner opening the door to follow behind me so I began pursuit. And while in the midst of this the airship was overhead. He probably came overhead as we entered the drive-through and we were being pointed out by the suspect and he began broadcasting that I was in foot pursuit. So, he was broadcasting and my partner was behind me.”⁵

The Minority believes that Officer Menier separated from his partner during the foot pursuit while in apprehension mode. Although Officer Menier stated that he believed Officer Porter was pursuing Avelar with him, the investigation revealed that Officer Porter did not arrive next to Officer Menier until after Officer Menier had taken Avelar into custody by himself. This was approximately thirty seconds after Officer Menier and Avelar went down to the ground. The separation between Officer Menier and Officer Porter was too sizable for Officer Porter to render any sort of aid to officer Menier while taking Avelar into custody.

Additionally, due to the separation, Officer Menier was unable to work in a team configuration with Officer Porter to apprehend Avelar. This is further compounding the issue that officers should generally pursue armed suspects in containment mode. All factors considered, Officer Menier should not have pursued Avelar, because Avelar was not in a tactical disadvantageous position.

Based on Department approved tactics, the minority opinion recommends that the Tactics Findings for Officer Menier be classified as Administrative Disapproval/Out of Policy.

MICHAEL P. RIMKUNAS, Commander
Member, Use of Force Review Board
Assistant to the Director, Office of Operations

⁵ Officer Menier’s statement, Page 10, Line 16